

Supreme Court, U.S.
FILED

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No. _____

OFFICE OF THE CLERK

In the
Supreme Court of the United States

DR. ELIZABETH MASON FROTHINGHAM,
Petitioner

v.

DONALD H. RUMSFELD,
Secretary of the United States, et al.,
Respondents

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

ELIZABETH MASON FROTHINGHAM,
Petitioner pro se

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QUESTIONS PRESENTED

1. Whether the affirmation of the Fourth Circuit is in direct conflict with past decisions rendered by the Fourth Circuit, giving rise to inconsistency and confusion where the stability and settled expectation of case law precedents regarding the jurisdictional issues of its established "domestic relations exceptions" should prevail.
2. Whether a federal government agency is obligated to comply with the Fifth and Fourteenth Amendments that require due process procedures, including adequate opportunity for discovery, in order to protect the life, liberty and property rights of the individual citizen and is not permitted to invoke a standard of authority superior to the U.S. Constitution.
3. Whether the decision of the Fourth Circuit to affirm the Final Judgment of the District Court allowing seizure of vested private property by a military governmental agency violates the Supreme Court's landmark decision in *Cleveland Board of Education v. Loudermill*.

PARTIES TO THE PROCEEDINGS

Petitioner is: Elizabeth Mason Frothingham (Lammers), referred to as "petitioner."

Respondents are: DONALD H. RUMSFELD, in his official capacity as Secretary of the United States of America; CARL W.S. CHUN, in his official capacity as Director of the Army Board for Correction of Military Records; PETER SCHOOMAKER, in his official capacity as Chief of Staff for the United States Army; LES BROWNLEE, in his official capacity as Acting Secretary for the United States Army; THOMAS J. ROMIG, in his official capacity as Judge Advocate for the United States Army; STEVEN MORELLO, in his official capacity as General Counsel for the United States Army; PAUL T. MIKOLASHEK, in his official capacity as Inspector General for the United States Army, referred to collectively as the "U.S. Army."

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- I. THE AFFIRMATION OF THE FOURTH CIRCUIT IS IN DIRECT CONFLICT WITH PAST DECISIONS RENDERED BY THE FOURTH CIRCUIT, GIVING RISE TO INCONSISTENCY AND CONFUSION WHERE THE STABILITY AND SETTLED EXPECTATION OF CASE LAW PRECEDENTS REGARDING THE JURISDICTIONAL ISSUE OF ITS ESTABLISHED "DOMESTIC RELATIONS EXCEPTIONS" SHOULD PREVAIL..... 20

- II A FEDERAL GOVERNMENT AGENCY IS OBLIGATED TO COMPLY WITH THE FIFTH AND FOURTEENTH AMENDMENTS THAT REQUIRE DUE PROCESS PROCEDURES, INCLUDING ADEQUATE OPPORTUNITY FOR DISCOVERY, IN ORDER TO PROTECT THE LIFE, LIBERTY AND PROPERTY RIGHTS OF THE INDIVIDUAL CITIZEN AND IS NOT PERMITTED TO INVOKE A STANDARD OF AUTHORITY SUPERIOR TO THE U.S. CONSTITUTION..... 23

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Dr. Elizabeth Mason Frothingham (Lammers) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The Fourth Circuit's opinion is unreported.¹ (App. 1a-2a) The Fourth Circuit's order denying the timely petition for rehearing and rehearing en banc is unreported. (App. 3a-4a) The *Final Judgment* and *Memorandum Order* of the District Court for the Eastern District of Virginia, Alexandria Division, are unreported. (App. 5a-18a)

JURISDICTION

The judgment of the Fourth Circuit was entered on May 19, 2005. Subsequently, the Fourth Circuit denied the timely petition for rehearing and rehearing en banc on July 29, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

¹ "App." refers to the appendix to this petition

REGULATORY PROVISIONS INVOLVED

1. *Irrevocability of elections* in the Uniformed Services Former Spouses Protection Act: Annuities under Survivor Benefit Plan ("SBP"). 10 U.S.C., Sections 1447-1452

Standard annuity – An election under Section 1448(a)(4) not to participate in the Plan is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

2. *Administrative Procedures Act* – ... the agency shall maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. 5 U.S.C., Regulation 552a

3. *Summary Judgment* – When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not respond, summary judgment, if appropriate, shall be entered against the adverse party. FED R.CIV P, 56(e)

STATEMENT

1. Government Assessment: U.S. Department of Justice

“... the instant matter presents extraordinarily-unique circumstances that are unlikely to be repeated at all, let alone with any frequency,”

is the assessment provided by the attorney assigned by the U.S. Department of Justice to represent the seven defendants, all high-level officers in the U.S. Army. *Memorandum of Law in Support of the Motion to Dismiss and For Summary Judgment*, dated September 30, 2004.

2. Historical Background

The petitioner is the irrevocable beneficiary of a military insurance annuity, known as the Survivor Benefit Plan (“SBP”), since August 1978. Upon reaching his 60th year, Colonel William Henry Lammers (“Col. Lammers”) voluntarily made this spousal election six months after he had married the petitioner.

When Col. Lammers died on September 22, 1998, his eight-year incomplete divorce action abated. The certified Clerk’s Minutes for the Supreme Court of New York County in *Lammers v. Lammers* (No. 64037/91) have no record of a final, absolute decree of divorce. None existed. Indeed, no resolution of the financial issues, including the distribution of marital assets, ever took place.

Col. Lammers maintained two insurance policies in which the petitioner was named as the sole beneficiary. One policy was managed by TIAA/CREF, among the foremost private